

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 12 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: BEN TOMA, Speaker of the Arizona House of Representatives, in his official Capacity; WARREN PETERSEN, President of the Arizona Senate, in his official capacity.

No. 23-70179

D.C. No. 2:22-cv-00509-SRB
District of Arizona,
Phoenix

ORDER

BEN TOMA, Speaker of the Arizona House of Representatives, in his official capacity;
WARREN PETERSEN, President of the Arizona Senate, in his official capacity,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF ARIZONA, PHOENIX,

Respondent,

MI FAMILIA VOTA; et al.,

Real Parties in Interest.

Before: W. FLETCHER, CALLAHAN, and BENNETT, Circuit Judges.
Order by Judges CALLAHAN and BENNETT; Dissent by Judge W. FLETCHER.

The motion to stay the district court's September 14, 2023 discovery order (Docket Entry No. 2) is granted. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (defining standard for stay pending appeal). The portions of the district court's September 14, 2023 order (1) allowing real parties in interest to depose petitioners

about “their personal involvement in the Voting Laws’ legislative process” and (2) requiring production of “communications sent or received by either the Speaker or the President which have been withheld on legislative privilege grounds” are stayed. Any communications that petitioners already produced should not be used or disclosed beyond the scope of the protective order in place. This order does not stay any other portions of the district court’s orders or district court proceedings.

This petition for a writ of mandamus raises issues that warrant an answer. *See* Fed. R. App. P. 21(b). Accordingly, by October 20, 2023, real parties in interest must file an answer. The answer should address the scope and application of legislative privilege, the conditions under which a legislator waives the privilege, particularly under A.R.S. § 12-1841, and the relevance of the requested information to the constitutionality of the challenged Voting Laws.

The district court may also address the petition if it so desires. *See* Fed. R. App. P. 21(b)(4). If the district court elects to address the petition, it may file an answer with this court or issue a supplemental order and serve a copy on this court by October 20, 2023.

Petitioners may file a reply by October 25, 2023.

The Clerk will calendar this petition during the month of November 2023. *See* 9th Cir. Gen. Ord. 3.3(g). In granting a stay, we do not intend to constrain the merits panel’s consideration of the merits of this petition in any way. The stay

shall remain in effect until the merits panel decides this petition or issues an order lifting the stay.

The Clerk will serve a copy of this order on the district court and District Judge Susan R. Bolton.

Judge W. Fletcher respectfully dissents.